

NOMINATION AGREEMENT 1st October Special Live Foal

AN AGREEMENT for the sale and purchase of a nomination for the covering season of «an_season» ("the Year") to the Stallion «stallion_name» ("Stallion") Standing at «darley_farm_name»

Parties: «darley_farm_address_line1» «trading_as» «darley», «darley_farm_address_single_line»
«purchaser_name»
«purchaser_address_single_line»

("the Stud")
("the Vendor")
("the Purchaser")

The Vendor hereby discloses to the Purchaser that the Vendor has agreed to pay a commission to «agent_name» ("the Agent") of «c_agent_comm_pc_fmt»% ("the Commission") of the Nomination Fee once the Nomination Fee has been paid in full and in accordance with the Due Date and upon receipt of an invoice from the Agent received no later than 31st January of the year following covering. The Vendor retains the right to withhold all or part of the Commission if the Nomination Fee is not paid within the terms of this Agreement or the Agent Authorisation Form has not been lodged if applicable.

1. DEFINITIONS:

In this Agreement the definitions in the Standard Terms of the Thoroughbred Breeders' Association set out overleaf shall apply and the expressions set out hereunder shall mean as follows:

"Mare" means a thoroughbred mare nominated pursuant to this Agreement by the Purchaser including where the context permits any substitute mare. [The Purchaser has nominated «mare_name»]

"Nomination Fee" means «fee_currency»«c_fee_fmt_with_alternate» (plus VAT where applicable)

"Keep and Expenses" means reasonable daily charges (plus VAT where applicable) for keep of the Mare (and foal), plus any other incidental expenses reasonably incurred by the Vendor with third parties in connection with the Mare (and foal).

The "Due Date" means the 1st October following the end of the covering season for the Year.

2. PURCHASE AND SALE: The Vendor agrees to sell and the Purchaser agrees to purchase for the Nomination Fee one nomination to the Stallion for the covering season of the Year subject to the terms of this Agreement and (but only insofar as they are consistent with the terms of this Agreement) the Standard Terms of the Thoroughbred Breeders' Association set out overleaf.

3. PAYMENT OF NOMINATION FEE: The Nomination Fee shall become due and payable by the Purchaser to the Vendor without deduction or set off on the Due Date unless the Purchaser produces for inspection not later than 14 days after the Due Date a certificate signed by a qualified veterinary surgeon relating to an examination carried out at least 40 days after the Mare's last service by the Stallion and not later than the Due Date to the effect that the Mare has been found barren; provided that if it subsequently appears that the said certificate was mistaken the Purchaser will inform the Vendor immediately and the said fee will be payable on the Due Date or on the date when the mistake becomes evident, whichever is the later. Further payment terms are set out in Clause 6 of the Standard Terms. (The Purchaser will be refunded the Nomination Fee provided that: first, the Nomination Fee has been paid not later than 30 days after the Due Date; secondly, that the Purchaser produces to the Vendor a veterinary certificate to the effect that the Mare either fails to give birth to a live foal or gave birth to a foal which died within 48 hours of its birth other than by reason of accident; and thirdly that there has been no change of ownership of the Mare).

4. PAYMENT OF KEEP AND EXPENSES: Keep and Expenses shall become due and payable by the Purchaser within 28 days of the Vendor sending the Purchaser an invoice. The Purchaser undertakes to pay such invoice to the Vendor regardless of whether the Mare has been served or is certified pregnant.

5. INTEREST: If the Nomination Fee or Keep and Expenses are not paid within 30 days of their respective due dates, interest at 8% per annum above Barclays Bank Plc base lending rate from time to time will be charged on such sum or sums as may remain unpaid from time to time, accruing from the due date(s) until payment in full.

6. CERTIFICATE OF COVERING: The certificate of covering of the Mare may be withheld by the Vendor or the manager of the Stud or their respective servants or agents until payment is made of all monies due to the Vendor in respect of the Mare and/or foal or other monies due by the Purchaser to the Vendor and the Purchaser undertakes with the Vendor not to register or attempt to register the ownership of the foal of the Mare until full payment is made of all such monies.

7. LIEN: For the purposes solely of this paragraph, the expression "Vendor" shall be taken to include any company whose ultimate ownership is the same as that of the Vendor. The Vendor shall have a general and particular lien over the Mare, any other mare owned by the Purchaser or any foal (in utero or born alive) born as a result of a nomination under this Agreement or any other nomination agreement between the Purchaser and the Vendor. Such lien shall be for all claims and money owing by the Purchaser to the Vendor under such agreement(s) until all sums owed have been received by the Vendor. After giving 21 days written notice to the Purchaser the Vendor shall be entitled to sell or dispose of the Mare, any other such mare or any such foal at the expense of the Purchaser and apply the proceeds towards the payment of such sums. Such sale or disposal shall be at the expense of the Purchaser. The Vendor shall be entitled to apply the proceeds in or towards the payment of such sums and upon accounting to the Purchaser for any balance remaining after payment of such sums and costs of sale or disposal the Vendor shall be discharged of any liability whatsoever in respect of the Mare, any other such mare and any such foal.

8. LIABILITY: The Vendor shall have no liability to the Purchaser for any disease, accident or injury suffered by or for the death of the Mare and/or her foal. The Purchaser and the Vendor acknowledge that the foal may be born on or before 31 December of the year of covering. If the Vendor agrees that the Mare may be covered before the beginning of the covering season the Purchaser and the Vendor acknowledge that the risk of the foal being born on or before 31 December will be materially higher than if the covering took place during the covering season. In any event the Purchaser acknowledges that any such pre-31 December birth shall have no effect on the Vendor's rights under this Agreement, and in particular to the Vendor's rights to payment for the covering services the Vendor shall have provided.

9. ENTIRE AGREEMENT: This Agreement sets out the whole of the agreement and understanding between the parties to the exclusion of all or any formal or informal discussions, arrangements or agreements between the parties. Save as is expressly set out in this Agreement and the Standard Terms, all other terms, warranties, representations, and conditions implied by custom, statute, equity or common law are expressly excluded.

10. WARRANT OF AUTHORITY: The Purchaser warrants that the Purchaser is the owner and/or the Agent of the owner of the Mare and further warrants that the Purchaser is authorised to accept and is accepting the terms and conditions of this Agreement not only for the Purchaser, but also as the Agent for and on behalf of all other persons or organisations who are or may hereafter become interested in the Mare and her foal. If the Purchaser is acting as the Agent for the owner, the Purchaser shall be personally liable under this Agreement unless that status and the full name of the owner are stated on this Agreement.

11. DISPUTE RESOLUTION: This Agreement shall be governed by and construed in accordance with English Law. It is irrevocably agreed for the benefit of the Vendor that the Courts of England shall have exclusive jurisdiction to resolve any claim by the Vendor against the Purchaser in respect of non-payment of the Nomination Fee and/or of Keep and Expenses and/or, in either case, interest thereon. Clause 14 of the Standard Terms shall (for the avoidance of doubt) only apply to disputes which do not involve a claim by the Vendor against the Purchaser in respect of non-payment of the Nomination Fee and/or keep and expenses and/or, in either case, interest thereon.

12. INDEMNITY: The Purchaser shall indemnify the Vendor against all liabilities, costs, expenses, damages and losses (including but not limited to loss of profit, loss of reputation and all interest, penalties and legal costs) incurred by the Vendor arising out of or in connection with the Purchaser's breach or non-performance of this agreement and the enforcement of this agreement

13. MISCELLANEOUS: If the Mare is not approved pursuant to clause 3 of the Standard Terms, this Agreement shall be null and void. The Vendor will pay or procure to be paid in respect of the Stallion by the Due Date a contribution to the European Breeders' Fund in accordance with the regulations published by the Trustees thereof. The Contract (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no rights or benefits expressly or impliedly conferred by it shall be enforceable under that Act against the parties to it by any other person. We collect, hold and process information about customers for administration and marketing purposes. You agree to Us collecting holding and processing such information. We shall not use or disclose such information for other purposes without Your permission, for further information on our data protection policies please refer to our Privacy Policy at www.godolphin.com. At the Vendor's election this Agreement will not take effect unless the Purchaser signs and returns both copies thereof to the Vendor not later than «return_by_dates». By signing this Agreement the purchaser confirms that they have read, understood, and agreed to all its terms, including those detailed overleaf.

.....
(Signature of the Vendor)

.....
(Signature of the Purchaser/Authorised Agent)

.....
(Print Name - Purchaser)

.....
(Date)

Please note that under this agreement the Purchaser will not be entitled to compensation from the Vendor for any damage to or loss of the Mare and is therefore recommended to seek professional advice as to appropriate insurance cover.

Thoroughbred Breeders' Association Standard Terms

1	DEFINITIONS In this Agreement:- "the covering season" means 15 th February to 15 th July inclusive "each oestrus period" means each oestrus period during the covering season "nomination" means the right (subject to the terms of this Agreement) to present one thoroughbred mare for service by the Stallion in each oestrus period "certified pregnant" means certified pregnant by a qualified veterinary surgeon at least 40 days after the last service.	7	AVAILABILITY OF STALLION For the purpose of paragraph 6 the Stallion will be deemed to be available unless service of the Mare is prevented by the death impotence disease or other incapacity (except infertility) of the Stallion or by the Stallion not being available for any other reason to serve the Mare at the Stud.
2	NOMINATION AND PARTICULARS OF MARE The Purchaser will nominate a thoroughbred mare ("the Mare") for service by the Stallion and will give to the Vendor or his agent written particulars of the Mare which the Vendor or his agent will forward to the Manager of the Stud. Such particulars will be given before the arrival of the Mare at the Stud and will include details of any illness disease vice or disposition of or affecting the Mare which may be prejudicial to the Stallion.	8	DISPOSAL OF STALLION If the Stallion ceases to be available to serve the Mare at the Stud by reason of any act or default on the part of the Owner or the Committee which is first notified to the Purchaser after the 1 st January preceding the start of the covering season the Vendor will be liable to pay to the Purchaser forthwith as agreed compensation for breach of this Agreement a sum equal to one half of the nomination fee, provided that the Purchaser has signed and returned a copy of this Agreement to the Vendor as specified overleaf. If such notification is first given before the said 1 st January, no compensation will be payable by the vendor.
3	APPROVED MARES ONLY If this Agreement is for approved mares only, acceptance of the Mare in respect of this nomination will be subject to the approval of the Stallion owner ("the Owner") or the Stallion Syndicate Committee ("the Committee") or his or their agent at his or their sole discretion.	9	STUD MANAGERS' DISCRETION At any time up to 40 days after the Mare's latest service by the Stallion or until such earlier date as the Mare leaves the Stud the Manager of the Stud, acting with the approval of the qualified veterinary surgeon who normally attends the Stud, may take such action in regard to the Mare as in his opinion is necessary or desirable with a view to the Mare producing a single live foal.
4	REFUSAL OF SERVICE Service of the Mare by the Stallion may be refused by the Manager of the Stud after consultation with the qualified veterinary surgeon who normally attends the Stud.	10	CERTIFICATE OF SERVICE The stallion owner or their representative will issue a covering certificate, for release on payment of the nomination fee, for each mare mated by their stallion(s). The covering certificate may be in paper format or electronic equivalent, authorized by the Proprietors of the General Stud Book.
5	SUBSTITUTION If before being served the Mare dies or is refused under paragraph 3 or becomes unfit for service or is refused service under paragraph 4 the Purchaser will be entitled to substitute another thoroughbred mare, to be approved (if applicable) for the remainder of the covering season on the same terms and the expression "the Mare" in this Agreement will where the context permits include any such substituted mare.	11	DISPOSAL OF NOMINATION The right to use the nomination is personal to the Purchaser and shall not be sold or otherwise disposed of without the written consent of the Vendor and of the Owner or the Committee.
6	PAYMENT TERMS	12	TRANSFER OF NOMINATION Subject to paragraph 5 the nomination shall not be transferable to any other Mare without the written consent of the Vendor and of the Owner or the Committee.
(a)	In addition to the terms overleaf the nomination fee will also be payable forthwith:- (i) If after the Mare has been served by the Stallion and certified pregnant any abortifacient is used on the Mare by the Purchaser or with his authority or consent, regardless of whether or not the Mare is believed to be carrying a single foetus.	13	DISPOSAL OF MARE If the Purchaser disposes of the Mare before the payment date, the Purchaser will, unless otherwise agreed in writing, pay the nomination fee forthwith.
or	(ii) If for any reason other than that the Stallion is not available the Purchaser fails to send the Mare to the Stud for service by the Stallion in each of three oestrus periods, or if, owing to the unreasonable refusal of the Purchaser to allow the Mare to be served, the Mare is not served by the Stallion in each of three oestrus periods. If the Mare leaves the Stud before being certified pregnant and after having been served by the Stallion in less than three oestrus periods, it is the responsibility of the Purchaser to deliver to the Vendor or his agent, not later than 30 days after the Mare's last service by the Stallion, written evidence from a qualified veterinary surgeon as to the current pregnancy status of the Mare.	14	ARBITRATION Any dispute whatsoever arising out of or in connection with this agreement between members of the Thoroughbred Breeders' Association shall be referred to a single arbitrator to be agreed upon between the parties or in default of agreement for 28 days to be appointed at the request of any party by the Board for the time being of the Thoroughbred Breeders' Association. The arbitrator shall have the power to take the opinion of such Counsel as he may think fit upon any question of law that may arise and to obtain the assistance of such other expert as he may think fit and to act on any such opinion or expert assistance. The decision of the arbitrator shall be final and binding on both parties to this Agreement. The costs of arbitration (including the fees and expenses of the arbitrator) shall be in the discretion of the arbitrator who may direct to and by whom and in what manner such costs or any part thereof shall be paid, and may assess the amount of such costs or any part thereof or direct how the same shall be assessed. The arbitrator will be appointed on terms that no claim whatsoever will be made against him in respect of his decision or his conduct of the arbitration. This arbitration clause shall not apply where at least one of the parties to the dispute is not a member of the Thoroughbred Breeders' Association.
(b)	The nomination fee will not be payable:- (i) If the Mare dies after being served by the Stallion but before the payment date, whether or not she was believed to be pregnant at the date of her death.	15	GOVERNING LAW AND JURISDICTION This agreement shall be governed by English law, and each of the parties submits to the exclusive jurisdiction of the courts of England.
or	(ii) If the Mare is not served by the Stallion and paragraph 6(a)(ii) does not apply.		